80-1237

Office-Supreme Court, U.S.
FILED
JAN 7 1981
ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JEFFREY A. DAVIS
REYNOLDS, ALLEN, COOK,
PANNILL & HOOPER
Incorporated
16th Floor, 1100 Milam Bldg.
Houston, Texas 77002
(713) 651-1300

Attorneys for Petitioners

Of Counsel:

JEFFREY L. ROGERS

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

QUESTIONS PRESENTED

(1) Does a Complaint alleging dilution of the voting rights of Mexican-Americans, as a result of the at-large election of the members of a school board, state a claim under Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973 (Supp. V 1975).

(2) Is the Board of Trustees of an independent school district in Texas a state or political subdivision within the scope of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973 (Supp. V 1975).

PARTIES BELOW

The Plaintiff in this case is the United States, by and through the Department of Justice.

The Defendants are the Uvalde Consolidated Independent School District, and the Board members of the Uvalde Consolidated Independent School District, Cecil Arnim, Jr., President; Billie Bailey, Vice President; Robert L. Jacobs, Secretary; J. A. Lanning, Jr., Member; Dean P. Dimmitt, Member; Dan Davis, Member; and Tommy Morriss, Member.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	I
PARTIES BELOW	I
TABLE OF CONTENTS	II
TABLE OF AUTHORITIES	III
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
REASON FOR GRANTING THE WRIT	5
CONCLUSION	15

Appendices

Appendix A—Opinion of the 5th Circuit	A-1
Appendix B—Final Judgment and Order Overruling Petition for Rehearing	B-1
Appendix C—U.S. Constitution, Amendment XIV	C-1
Appendix D—U.S. Constitution, Amendment XV	D-1
Appendix E—42 U.S.C. § 1973	E-1

TABLE OF AUTHORITIES

CASES

	Page
Beer v. United States, 425 U.S. 130 (1976)	6
City of Mobile v. Bolden, ____U.S.____, 100 S.Ct. 1490 (1980)	4, 6, 7, 8, 9, 11
City of Rome v. United States, ____U.S.____, 100 S.Ct. 1548 (1980)	14, 15
Dougherty County, Georgia Board of Education v. White, 439 U.S. 32 (1978)	5, 14
East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976)	12
State of South Carolina v. Katzenbach, 383 U.S. 301 (1966)	5
United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 110 (1978)	14, 15
White v. Regester, 412 U.S. 755 (1973)	10
Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973)	12

U. S. CONSTITUTION

Amendment XIV	2, 4, 9, 11
Amendment XV	2, 6, 11

STATUTES

Tex. Elect. Code Ann., art. 5.09a (Vernon Supp. 1980)	13
42 U.S.C. 1973 (§ 2) (Supp. V 1975)	*passim*
42 U.S.C. 1973c (§ 5)	5, 10, 14
42 U.S.C. 1973*l*(c)(2)-(14(c)(2))	4, 5, 13, 14, 15
42 U.S.C. 1973b(f)(2)	9
42 U.S.C. 1973j(d) (§ 12(d))	12
42 U.S.C. § 1971(a)(1)	14

OTHER AUTHORITIES

Pub. L. 89-110, 79 Stat. 437	10
H.R. Rep. No. 439, 89th Cong., 1st Sess. (1965)	10
U.S. Code Cong. & Ad. News 1965, pp. 2437 *et seq.*	10
S. Rep. No. 94-295, 94th Cong., 1st Sess., p. 24 (1975)	10
U.S. Code Cong. & Ad. News 1975, p. 790	10, 11
111 Cong. Rec. 9270 (1965)	14

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS BELOW

The opinion of the district court in the case of United States v. Uvalde Consolidated Independent School District, is reported at 461 F. Supp. 117 (W.D. Texas 1978). The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 625 F.2d 547 (5th Cir. 1980).

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 2, 1980. See Appendix B. Petitioners' Motions for Rehearing and Rehearing En Banc were overruled on October 9, 1980.

See Appendix B. The Petition for Certiorari was filed less than ninety (90) days from the latter date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1970).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV (Equal Protection).

Constitution of the United States, Amendment XV.

The Voting Rights Act of 1965, as amended, § 2, 42 U.S.C. § 1973 (Supp. V 1975).

STATEMENT OF THE CASE

This action, based upon Section 2 of the Voting Rights Act (hereinafter cited as the "Act"), was brought by the Attorney General on behalf of the United States, seeking declaratory and injunctive relief against the at-large system of selecting school board members in the Uvalde Consolidated Independent School District. Petitioners filed a Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted which was granted in October, 1978 without prejudice. After the Attorney General filed an Amended Complaint Petitioners successfully moved for the dismissal of the Amended Complaint.

The United States appealed to the Court of Appeals for the Fifth Circuit which, on September 2, 1980, reversed the judgment of the district court, and held that the Amended Complaint, alleging that the continued use of an at-large system for electing members of the Board of Trustees of the Uvalde Consolidated Independent School District violated Section 2 of the Voting Rights Act, stated a claim upon which relief could be granted.

In its Amended Complaint, the United States alleged that: the Uvalde Consolidated Independent School District is governed by a seven-member board of trustees elected at-large; candidates run for numbered positions; Mexican-Americans constitute approximately fifty (50%) percent of the population of the school district; under the current at-large system, Mexican-Americans have lost every election with the exception of one;[1] the school board has discriminated against Mexican-Americans in the past by operating an intentionally segregated school system at the elementary level; the Board of Trustees is unresponsive to the needs and desires of the Mexican-American community, voting in elections for school board members proceeds along racial lines; Mexican-Americans are concentrated in one geographical area of the City of Uvalde; as a result of the at-large system, Mexican-Americans have less opportunity than white residents to participate in the political process and elect members of the board; and, the at-large system has been implemented with the intent and purpose of causing, has caused and is causing irreparable injury to Mexican-American voters by denying them, in effect, meaningful access to the political process and by frustrating their right to a full, unabridged and undiluted vote.

The court of appeals held that a cause of action was stated under Section 2 of the Act even though the complaint in this case was not against practices that directly affect access to the ballot because, the court decided, the United States alleged that Petitioners implemented the at-large system of election with the purpose of caus-

1. As the Court below noted, the United States now stipulates that two Mexican-Americans have recently been elected. 625 F.2d at 549 n.2.

ing injury to Mexican-American voters by denying them meaningful access to the political process and by frustrating their right to a full, undiluted vote. The court of appeals reasoned that a majority of this Court in *City of Mobile v. Bolden*, ____U.S.____, 100 S. Ct. 1490 (1980) decided, in effect, that the fifteenth amendment prohibits purposefully discriminatory voting schemes 625 F.2d at 552. The court of appeals so reasoned even though a plurality of this Court decided that the fifteenth amendment reaches only practices that directly affect access to the ballot and that that amendment is not violated when minorities register and vote without hindrance. *See* 625 F.2d at 551.

As further support for its conclusion, the court of appeals decided that the fourteenth amendment is broader than the fifteenth and that it is well established that purposefully discriminatory at-large systems of election violate the fourteenth amendment rights of minorities. Therefore, when Congress amended Section 2 of the Act it did so fully cognizant of at-large dilution in Texas school board elections and intended to incorporate the broad reach of the fourteenth amendment into Section 2 of the Act.

The court of appeals also addressed the question of whether Section 2 of the Act applies to the Uvalde Consolidated Independent School District, since the District is neither a state nor county nor is it an entity responsible for the registration of voters according to the definition of "political subdivision" contained in Section 14(c)(2) of the Act, 42 U.S.C. § 1973*l*(c)(2). The court of appeals reasoned that although decisions of this Court are somewhat contradictory in their interpretation of Section 14

(c)(2), the effect of the decisions is that all political entities within a covered state are covered by the Voting Rights Act.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Expands The Scope Of Section 2 Of The Voting Rights Act Beyond That Intended By Congress.

This case involves the scope of Section 2 of the Voting Rights Act which provides that no "voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color," or because of language minority status. 42 U.S.C. § 1973. It does not involve Section 5 of the Act which requires preclearance from the Attorney General of any change in a political structure that may affect voting. 42 U.S.C. § 1973c. Section 5 has been described as an "extraordinary" exercise of Congressional power. *See State of South Carolina v. Katzenbach,* 383 U.S. 301, 385-362 (1966) (Black, J., dissenting). Section 2 has a much narrower reach, as the court of appeals recognized.

Justice Powell, dissenting in an opinion joined by the Chief Justice and Justice Rehnquist, in *Dougherty County, Georgia Board of Education v. White,* 439 U.S. 32, 44 n.4 (1978), succinctly described the reach of Section 2 when he observed that Section 2 is concerned with the right to cast a vote, not the right to participate in a single-member district election system.

> On the other hand, Section 1 [*sic,* Section 2] [as distinguished from Section 5] does not deal with

> every voting standard, practice, or procedure, but rather is limited to voting procedures that deny someone the right to vote.

439 U.S. at 44. Because the Voting Rights Act was originally enacted under the authority of the fifteenth amendment, Section 2 of the Act is somewhat narrow in scope:

> There is no decision in this Court holding a legislative apportionment or reapportionment violative of the Fifteenth Amendment. . . . But, in at least four cases the Court has considered claims that legislative apportionments violated the Fourteenth Amendment rights of identifiable racial or ethnic minorities. [Citations omitted.]

Beer v. United States, 425 U.S. 130, 142 n.14 (1976). (Stewart, J.) At least five members of the Court (the "Plurality" and Mr. Justice Marshall) recently found Section 2 of the Act to be coextensive with and limited by the fifteenth amendment. *City of Mobile v. Bolden,* ___ U.S.___, 100 S. Ct. 1490 (1980).

Yet, as set out above, the court of appeals has arrived at an expansive interpretation of Section 2 of the Act which allows a challenge by the United States to an existing at-large method of election in a small West Texas school district. The court of appeals reasoned that a majority of this Court in *Bolden* approved prior holdings of the fifth circuit that the dilution of the voting strength of minorities by the at-large method of election, coupled with an intent to so dilute the voting strength on the part of the elected officials, constitutes a violation on the part of the elected officials, constitutes a violation of the rights of the minority under the fifteenth amendment.

The court of appeals also reasoned that even if Congress did not have such authority under the fifteenth amendment, the 1975 amendments to the Act, including the amendment of Section 2 to prohibit discrimination in voting against language minority group members, were knowingly promulgated under the authority of the fourteenth amendment to address the "problem" of the dilution of the voting strength of Mexican-Americans by Texas school districts by using the at-large method of electing board members. In so doing, the court of appeals egregiously misread the language, holding and spirit of this Court's decision in *Bolden,* and has misconstrued the Congressional purpose behind the 1975 amendments to the Voting Rights Act.

The court of appeals noted that a plurality of this court seemed to indicate that the fifteenth amendment applied only to practices directly affecting access to the ballot and "is therefore not relevant in cases involving at-large districting." 625 F.2d at 551. However, the court of appeals glossed over the true meaning of the plurality opinion to conclude that what the plurality really said was that no fifteenth amendment claim was *proven* since there was insufficient proof of discriminatory purpose behind the at-large method of election. *Id.* at 552. Since, in this case, the United States, in its Amended Complaint, alleged that the at-large system has been implemented with the purpose of causing irreparable injury to Mexican-American voters by denying them meaningful access to the political process, the fifth circuit erroneously concluded that under *Bolden* a fifteenth amendment (and consequently a § 2) claim has been stated.

That analysis by the court of appeals ignores the ultimate conclusion of the *Bolden* plurality which is as follows:

> The Fifteenth Amendment does not entail the right to have Negro candidates elected, ... That Amendment prohibits only purposefully discriminatory denial or abridgement by government of the freedom to vote "on account of race, color, or previous condition of servitude." Having found that Negroes in Mobile "register and vote without hindrance," the District Court and Court of Appeals were in error in believing tha the appellants invaded the protection of that Amendment in the present case.

____U.S. at____, 100 S. Ct. at 1498-1499.

It cannot be ignored that the United States has not alleged that any Mexican-American within the jurisdiction of the Uvalde Consolidated Independent School District has been prohibited or discouraged from registering and voting without hindrance.

Justice Stevens, concurring in *Bolden,* acknowledges that a case challenging an at-large method of electing local officials does not "fit" within the category of those cases in which an individual is denied access to the ballot or an individual's vote in a heavily populated district is less significant than an individual's vote in a smaller district; his decision is based on the fact that in Mobile, Alabama, Black citizens registered and voted without hindrance and that there was no claim that an individual's vote was worth less than any other's. *Id.* at 1508-1509.

When the Amended Complaint of the United States in the instant case is held up to the "objective effects" test

of Justice Stevens, *id.* at 1512, and given the failure of the United States to allege that Mexican-Americans in the Uvalde Consolidated Independent School District may not register and vote without hindrance, it is apparent that the court of appeals erred in holding that the United States has, indeed, stated a cause of action on which relief can be granted.

The court of appeals also reasoned that the fourteenth amendment is broader in scope than the fifteenth amendment. Therefore, since the fourteenth amendment served as a basis for the relevant 1975 amendments to the Act, under fourteenth amendment precedents the United States stated a cause of action by claiming dilution or diminution in the voting strength of Mexican-Americans as a result of the at-large system coupled with the discriminatory purpose. The purpose of Congress in enacting the 1975 amendment to Section 2 of the Act was not to "plug in" precedents established in cases instituted by private individuals challenging at-large electoral systems on fourteenth amendment grounds. But, even if that were the Congressional purpose, the opinions of the plurality and of Justice Stevens in *Bolden* demonstrate that the Amended Complaint of the United States fails to state a cause of action under Section 2.

In 1975, Congress amended Section 2 of the Act to include a prohibition against abridging the voting rights of certain language minority citizens by incorporating into Section 2, Section 4(f)(2) of the Act. 42 U.S.C. § 1973b (f)(2). The court of appeals in this case stated that Congress was aware of and concerned about the dilution of the voting rights of language minority citizens when it enacted the 1975 amendments. Therefore, the court decided, Congress clearly intended, in 1975, to give the

United States the cause of action it now claims. 625 F.2d at 553. A closer examination of the record demonstrates the error in that determination.

Section 2 was originally enacted in 1975. Pub. L. 89-110, 79 Stat. 437 (1975) (codified at 42 U.S.C. § 1973). The Congressional reports, from that time, demonstrate the glaring absence of any discussion about assertedly dilutive effects of at-large voting systems on minority voting strength. *See* H. R. Rep. No. 439, 89th Cong., 1st Sess., (1965), *reprinted in* [1965] U.S. Code Cong. & Ad. News 2437 *et seq.* (hereinafter cited as "H. R. Rep., 1965"). The reasons for such an omission are obvious: it was not until 1973, when this Court decided *White v. Regester,* 412 U.S. 755 (1973), that a successful "dilution" case against an at-large system was prosecuted through the Court. Thus, Congress could not have intended in 1965 to give the Attorney General a cause of action non-existent at the time of its enactment of Section 2.

The amendments in 1975 were made to "broaden [the Act's] special coverage to *new geographic areas.* . . ." S.Rep. No. 94-295, 94th Cong., 1st Sess., p. 24 (1975), *reprinted in* [1975] U.S. Code Cong. & Ad. News 790 (hereinafter cited as "1975 Senate Report"). There is no indication that Congress intended to expand the scope of the Act substantively.

Rather, Congress was aware that constitutional attacks (as opposed to suits under Section 2) would continue to be the vehicle used for challenging existing at-large systems. The Act (at least Section 5) would apply and provide the intended remedial role only upon a successful constitutional challenge when the appropriate court ordered the implementation of the new system:

> Thus, for example, where a federal district court holds unconstitutional an apportionment plan which predates the effective date of coverage under the Voting Rights Act, any subsequent plan ordinarily would be subject to Section 5 review.

1975 Senate Report, *supra,* at 18. No suit by the Attorney General under Section 2, challenging an apportionment predating the coverage date of the Act, was envisioned.

Contrary to the statements by the court of appeals, there is no indication in the legislative history that Congress intended Section 2 to envelop the substantive proscriptions of the fourteenth amendment, and thus *White v. Regester.* The legislative history shows that Congress was concerned about the possibility that certain language minority citizens might not be considered members of a "race or color" group protected under the fifteenth amendment. Therefore, "the enactment of the expansion amendments" in 1975 based on the fourteenth and fifteenth amendments "would doubly insure the constitutional basis for the Act." 1975 Senate Report, *supra,* at 47-48. In summation, the legislative history does not support an expansion of Section 2.

Nevertheless, if the court of appeals is correct in its holding that Section 2 incorporates to the fullest extent the fourteenth amendment prohibition against dilution of the voting strength of minorities, the court of appeals erred in deciding that the Amended Complaint of the United States has stated such a cause of action. First, the allegations made by the United States against Petitioners were allegations that were *proven* in *Bolden.* Yet, the plurality and Justice Stevens determined that such facts were insufficient to constitute a violation of either

the fourteenth or the fifteenth amendments. As those two opinions indicate, the criteria established by the fifth circuit in *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd. sub nom. East Carroll Parish School Board v. Marshall,* 424 U.S. 636 (1976) (affirmed without approval of the Constitutional views expressed by the court of appeals) are insufficient to prove an unconstitutional discriminatory purpose. The so-called *Zimmer* criteria, which the United States apparently tried to follow in making its Amended Complaint, no longer provide a basis for relief under the Constitution.

In providing an expansive interpretation of Section 2, the court of appeals also ignored the limitations placed by Section 12(d) of the Act on the authority of the United States to attempt to institute such an action. Section 12(d) only authorizes the Attorney General in the name of the United States to seek "preventive" relief; that is, to prevent persons such as Petitioners from taking affirmative steps to violate the voting rights of minority group members. Here, the United States sought to have the court force Petitioners to restructure their entire system of electing school board members by dividing the school district into single member districts. Such a prayer for relief, makes a mockery of the phrase "preventive relief" as used in Section 12(d).

In summation, the United States has exceeded its statutory authority by challenging the long existing at-large method of electing members of the Board of Trustees for the Uvalde Consolidated Independent School District; it has wholly failed to state a cause of action upon which relief can be granted under Section 2 of the Voting Rights Act; therefore, the court of appeals erred in reversing the judgment of the district court.

2. The Uvalde Consolidated Independent School District Is Neither A "State" Nor A "Political Subdivision" For Purposes Of 42 U.S.C. § 1973 And Is, Therefore, Not Subject To Its Prohibitions.

The Voting Rights Act provision in question on this appeal, Section 2, prohibits practices or procedures that deny or abridge the voting rights of certain language minority citizens, only when imposed or applied by a "state or political subdivision." The term "political subdivision" is defined as:

> The term political subdivision shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting.

42 U.S.C. § 1973*l*(c)(2). As noted by the court of appeals, 625 F.2d at 554, the Uvalde Consolidated Independent School District is not a State, county or parish, and does not register voters. Tex. Elect. Code Ann., art. 5.09a (Vernon Supp. 1980). In short, "it is certainly not a political subdivision as defined by Section 14(c)(2)." 625 F.2d at 554. Therefore, the Uvalde Consolidated Independent School District is not a state or political subdivision for purposes of Section 2, and the United States has no Section 2 cause of action against it.

A limited interpretation of the term "political subdivision" within the meaning of Section 2 of the Act is consistent with and compelled by the Congressional purpose in enacting Section 2. The term "political subdivision" was defined in the Act to limit its scope, so that

it would not "confer jurisdiction upon the federal government to intervene in every ward of every city and town covered by the bill." 111 Cong. Rec. 9270 (1965).

There is no sound reason, consistent with fundamental principles of statutory construction, for refusing to acknowledge the clear limitation placed on the term "political subdivision" within Section 2 by the definition in Section 14(c)(2). Congress chose to limit the reach of Section 2 to those governmental entities charged with the responsibility of registering voters, i.e., states, counties, or parishes. Had Congress desired greater breadth for Section 2, it could have omitted any limiting definition of the term "political subdivision," or could have drafted Section 2 in such a way that there would be no doubt as to its scope, as Congress did in other voting legislation. *See, e.g.,* 42 U.S.C. § 1971(a)(1).

Admittedly, Section 14(c)(2) of the Act, defining the term political subdivision, has been held inapplicable to restrict the reach of Section 5 of the Act, 42 U.S.C. § 1973(c). *Dougherty County, Georgia Board of Education v. White,* 439 U.S. 32 (1978); *United States v. Board of Commissioners of Sheffield, Alabama,* 435 U.S. 110 (1978). Nevertheless, these cases do not affect the limitation placed on Section 2 of the Act by definition of "political subdivision" in Section 14(c)(2).

As Justice Powell aptly noted in his dissent in *City of Rome v. United States,* ____U.S.____, 100 S.Ct. 1548 (1980), "it is elementary that where the language of the statute is clear and unambiguous, there is no occasion to look at legislative history." *Id.* at 1573. The meaning of the term "political subdivision" is clearly limited by the definition given it in Section 14(c)(2) on the face of the

statute without resort to legislative history. Again, as Justice Rehnquist stated in *Sheffield*: "whatever other ambiguities there may be in the Act, the definition of 'political subdivision' is not one of them." 435 U.S. at 143-44. (Rehnquist, J., dissenting).

Any construction of the term "political subdivision" within the meaning of Section 2 of the Voting Rights Act to include the Uvalde Consolidated Independent School District would be the "protean construction" Justice Powell warned in his *Rome* dissent would reduce the statute to irrationality.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

REYNOLDS, ALLEN, COOK,
PANNILL & HOOPER

By: _____
JEFFREY A. DAVIS
16th Floor, 1100 Milam Bldg.
Houston, Texas 77002
(713) 651-1300

Attorneys for Petitioners

Of Counsel:

JEFFREY L. ROGERS

January 7, 1981

APPENDIX A

UNITED STATES of America,
Plaintiff-Appellant,

v.

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, et al.,
Defendants-Appellees.

No. 79-1498

UNITED STATES COURT OF APPEALS
Fifth Circuit

Sept. 2, 1980.

United States brought suit against school district and members of its board of trustees claiming that use of at-large method of electing school board members had been implemented with intent and purpose of causing irreparable injury to Mexican-American voters by effectively and purposefully precluding them from meaningful access to the political process and that election system was therefore unlawful under federal law. The United States District Court for the Western District of Texas, 461 F.Supp. 117, John H. Wood, Jr., J., dismissed suit for failure to state a claim upon which relief could be granted, and United States appealed. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held that: (1) Congress was authorized under Fourteenth Amendment to amend Voting Rights Act section to prohibit purposefully discriminatory maintenance of vote-diluting at-large districting scheme; (2) Voting Rights Act section was intended to provide Attorney General with means of combatting use

of at-large districting plans to dilute Mexican-American vote, and thus complaint stated cause of action; and (3) for purpose of Voting Rights Act section, school district was a "political subdivision."

* Reversed and remanded.

James C. Hill, Circuit Judge, concurred specially and filed opinion.

Appeal from the United States District Court for the Western District of Texas.

Before HILL, RUBIN and ANDERSON, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

A complaint by the Attorney General, in the name of the United States, brought under the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1971, 1973 to 1973bb-1, alleges that an at-large system of electing representatives to a local school board in Texas "has been implemented with the intent and purpose of causing . . . irreparable injury to Mexican-American voters . . . by effectively and purposefully precluding them from meaningful access to the political process. . . ." The district court dismissed the suit for failure to state a claim upon which relief could be granted Fed. R. Civ. P. 12(b)(6). Because we find that the complaint made allegations which, if proved, would be sufficient to warrant relief, we reverse and remand for further proceedings.

I.

[1] The case reaches us on the unsupported but not yet disproved allegations of the complaint. This initial

pleading, which is required only to give notice of the claim, must be construed liberally so as to do substantial justice. Fed. R. Civ. P. 8(e). A complaint is not to be dismissed under Rule 12(b)(6) unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations.[1]

The complaint alleges that:

> the seven member Board of Trustees of the Uvalde Consolidated Independent School District is elected at-large;
>
> approximately fifty percent of the population of the school district is Mexican-American, but Mexican-American voters' residences are concentrated in one part of the City of Uvalde;
>
> only one Mexican-American has ever been elected to the Board of Trustees and currently no Mexican-Americans serve on the Board;[2]
>
> voting is normally along racial lines;
>
> the Board has discriminated against Mexican-Americans in the past by operating intentionally segregated elementary schools and is unresponsive to the needs of the Mexican-American community;
>
> as a result of the school district's election system, Mexican-Americans have less opportunity than "whites" to participate in the political process and to elect condidates of their choice to the Board;

---

1. *Conley v. Gibson*, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed. 2d 80 (1957). As Professor Charles Wright says, the rule "has been stated literally hundreds of times." It "precludes final dismissal for insufficiency of the complaint except in the extraordinary case where the pleader makes allegations that show on the face of the complaint some insuperable bar to relief." C. Wright, Law of Federal Courts, 3d ed., 322. See also 5 C. Wright & A. Miller, Federal Practice and Procedure: Civil §§ 1215, 1216.

2. At oral argument the Assistant United States Attorney stipulated that two Mexican-Americans have recently been elected.

> the at-large system of electing the Board has been implemented with the purpose of causing, and is causing, irreparable injury to Mexican-American voters by denying them, in effect, meaningful access to the political process and by frustrating their right to a full, undiluted vote.

Relying on these allegations, the Attorney General sought a judgment declaring that the at-large election system violated section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, and enjoining the use of that system.

Acknowledging that at-large systems of selecting voters may violate the fourteenth amendment, *see White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Whitcomb v. Chavis,* 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), and, that if the complaint had been filed by an aggrieved voter, the allegations might state a fourteenth amendment claim, the district court nevertheless held that section 2 of the Voting Rights Act does not itself prohibit the maintenance of an at-large method of election for school board members,[3] and, therefore, that the Attorney General had

---

3. The original complaint filed by the Attorney General did not include an allegation of intentional voting discrimination. The district court dismissed that complaint, but allowed the United States twenty days within which to amend it. The United States did so, adding the allegation of intentional discrimination. The amended complaint was also dismissed by the district court which held, despite the intent allegation, that "the Attorney General, in the name of the United States, has no cause of action under . . . 42 U.S.C. § 1973 [section 2] when he alleges that as a result of the at-large method of election Mexican-American residents have less opportunity than do others to participate in the political process." The district court specifically noted that its decision did not affect the right of private citizens to bring an action. The district court also rejected the United States' other bases for the claim; however, on appeal the United States rests solely on the contention that the complaint states a cause of action under section 2.

no basis for the suit. Before this court the school district contends that the district court's conclusion should be affirmed both because section 2 does not reach at-large districting schemes and because a school board is not a "State or political subdivision" covered by section 2. We address each argument in the light of Supreme Court and Fifth Circuit interpretations of the Voting Rights Act. In doing so, we do not repeat the discussion of its history and purposes set forth in many prior decisions. *See, e. g., United States v. Board of Commissioners of Sheffield, Ala.,* 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148 (1978); *Allen v. State Board of Elections,* 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). However, we point out that a single statute contains a number of different provisions each with a different objective, that for its comprehension critical examination of each section is essential and that the reader cannot, therefore, assume that each of the sections is designed to reach the same objective or is necessarily to be read in the same manner.[4]

---

4. We set out very briefly, for the reader who is unfamiliar with the basic anatomy of the statute, a summary of the Act.
The Voting Rights Act of 1965 enacted several different provisions to enforce the right to vote without discrimination based on race or color. Section 2, 42 U.S.C. § 1973, forbids any state or political subdivision to deny or abridge the right of a citizen to vote on the basis of race or color. Section 3, 42 U.S.C. § 1973a, sets forth judicial remedies to be utilized by a court whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendments. Section 4, 42 U.S.C. § 1973b, forbids the adoption of any test or device to deny or abridge the right to vote on the basis of race or color in "any" federal, state "or local election." Section 4, however, applies only to certain geographical areas: those states that maintained a voting test or device on November 1, 1964 and in which less than 50% of the persons of voting age residing in the state were registered to vote or actually voted in the presidential election of November, 1964; and, in addition, to "any political subdivision with respect to which such determinations have been made as a separate unit."

II.

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, which was amended in 1975 to include the words italicized below, provides:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, *or in contravention of the guarantees set forth in section 4(f)(2)* [42 U.S.C. § 1973b(f)(2)].

The guarantees of section 1973b(f)(2) [section 4(f)(2) of the amended Act] assure against any denial or abridgement of the right to vote because the voter is a member of a language minority group.[5] The Attorney

---

Section 5, 42 U.S.C. § 1973c, provides that, whenever a state or political subdivision designated pursuant to section 4 seeks to change a voting practice, it must obtain clearance for that change from either the United States District Court for the District of Columbia or the Attorney General. "This so-called 'preclearance' requirement is one of the most extraordinary remedial provisions in an Act noted for its broad remedies. Even the Department of Justice has described it as a 'substantial departure . . . from ordinary concepts of our federal system'; its encroachment on state sovereignty is significant and undeniable." *United States v. Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110, 141, 98 S.Ct. 965, 984, 55 L.Ed.2d 148 (1978) (Stevens J., dissenting, joined by Burger, C. J., and Rehnquist, J) (footnote omitted).

There is a marked difference between the coverage of sections 2 and 5. Section 5, with its stringent preclearance requirements, is limited to geographical areas designated under section 4 of the Act as having a history of discrimination; section 2 applies nationwide.

5. "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group. 42 U.S.C. § 1973b(f)(2)."

General is authorized to sue to prevent violations of section 2.[6]

The statute applies to any "standard, practice, or procedure" that "den[ies] or abridg[es]" the right of language minority groups to vote. Section 5 of the Act, 42 U.S.C. § 1973c, which prohibits certain jurisdictions from enacting any new "standard, practice or procedure with respect to voting" unless advance clearance is obtained, has been held to include changes from multiple single district to at-large election systems. *See Allen v. State Board of Elections,* 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). However, section 5 is more broadly remedial than section 2 and reaches all changes in voting laws and not simply voting practices that deny or abridge the right to vote. Thus, some members of the Supreme Court have reasoned that the broad interpretation given to section 5 may not justify a similarly broad reach for section 2. "Section 2 does not deal with every voting standard, practice, or procedure, but rather is limited to voting procedures that deny someone the right to vote." *Dougherty County Board of Education v. White,* 439 U.S. 32, 51 n.4, 99 S.Ct. 368, 379 n.4, 58 L.Ed.2d 269 (1978) (Powell, J., dissenting, joined by Burger, C. J., and Rehnquist, J.). These *Dougherty* dissenters became a plurality in *City of Mobile v. Bolden,* ____U.S.____, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) when they joined in

6. *See* 42 U.S.C. § 1973j(d). There is also a general authorization for the Attorney General to sue to redress violations of the Voting Rights Act of 1870, 42 U.S.C. § 1971, which safeguards the right of all citizens to vote at any election, including specifically school district elections, without distinction of race or color. If a school board election is not covered by section 2, the Attorney General, therefore, may attempt to bring a complaint under 42 U.S.C. § 1971(c). Although the Attorney General asserted a cause of action under § 1971 below, he does not press it before us.

an opinion by Justice Stewart holding that the mere dilution of the voting rights of a racial group did not violate the fifteenth amendment or, consequently, section 2 of the Voting Rights Act.

The school district now asserts, on the authority of *City of Mobile v. Bolden,* that a section 2 claim is not stated by allegations of dilution of voting rights, even coupled with a claim of discriminatory purpose.

III.

Bolden reversed a decision of this court holding that Mobile's at-large system of elections operated to discriminate against black voters in violation of the fourteenth and fifteenth amendments. *See Bolden v. City of Mobile,* 571 F.2d 238 (5th Cir. 1978). Our opinion had held that, if the challenged election laws were maintained for a discriminatory purpose, they violated both the fourteenth and fifteenth amendments, and that the plaintiffs had successfully proved discriminatory motive in the district court. The Supreme Court reversed our judgment.

The *Bolden* panel had not considered the statutory section 2 claims but upheld the judgment of the district court because the districting was found to violate both the fourteenth and fifteenth amendments. The Supreme Court, however, reviewed the circuit court decision under the statute as it stood prior to the 1975 amendment. While the members of the Court were not able to agree on a majority opinion, a plurality concluded that "the sparse legislative history of [pre-amendment] § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself." It, there-

fore, discussed the scope of the fifteenth amendment alone as coextensive with, as well as limitative of, section 2.

The plurality seems to conclude at one point "that the Fifteenth Amendment applies only to practices that directly affect access to the ballot" and is therefore not relevant to cases involving at-large districting. *See Bolden,* ____ U.S. at ____, 100 S.Ct. at 1509 n.3, 64 L.Ed.2d at 47 (Stevens, J., concurring in the judgment) *Cf. Dougherty County Board of Education v. White,* 439 U.S. 32, 99 S.Ct. 368, 379 n.4, 58 L.Ed.2d 269 (1978) (Powell, J., joined by Burger, C. J., and Rehnquist, J.) (section 2 "is limited to voting procedures that deny someone the right to vote"). However, Justice Stewart's opinion for the plurality also includes an extensive discussion of the need for proof of "racially discriminatory motivation" in a fifteenth amendment challenge to voting laws and implies that, where minorities register and vote without hindrance, such purposeful discrimination had not been shown. *See Bolden,* ____ U.S. at ____, 100 S.Ct. at 1517, 64 L.Ed.2d at 47 (White, J., dissenting) ("A plurality of the Court today agrees with the courts below that maintenance of Mobile's at-large system for election of city commissioners violates the Fourteenth and Fifteenth Amendments only if it is motivated by a racially discriminatory purpose.") Thus, the plurality's rejection of the fifteenth amendment and section 2 claims in *Bolden* may rest entirely upon the conclusion that no discriminatory motivation was shown.

[2] The ambiguity of the plurality opinion is alleviated by the various dissents and concurring opinions, each of which indicates that in a proper case an at-large districting plan may be held to violate the fifteenth amend-

ment and, therefore, section 2.[7] Moreover, the essential holding of this court in *Bolden,* that the fifteenth amendment prohibits purposefully discriminatory voting schemes, was approved in effect by a majority of the court. The plurality opinion focused on this requirement and appears to us to rest its conclusion that the fifteenth amendment was not violated on its finding that the "racially neutral" at-large districting was not "motivated by a discriminatory purpose." ____ U.S. at ____, 1100 S.Ct. at 1497, 64 L.Ed.2d at 47.[8]

[3] We are convinced that the fundamental reasoning of our decision in *Bolden,* and its companion, *Nevett v. Sides,* 571 F.2d 209 (5th Cir. 1978), survives the Supreme Court's decision intact. Thus, "a showing of racially motivated official action that infringes the right to vote

---

7. Justice Blackmun, for example, apparently assumes such a violation in *Bolden,* but concurs in the judgment of the plurality because the relief accorded by the district court "was not commensurate with the exercise of sound judicial discretion." Justice Stevens opined that the fifteenth amendment applies in cases involving at-large districting but concluded that the constitutionality of such systems should be measured by an objective standard, rather than by focusing on motivation. Justice White felt that the evidence established discriminatory motivation and, therefore, a violation of the fourteenth and fifteenth amendments. Justices Marshall and Brennan felt that proof of discriminatory intent was unnecessary.

8. Thus, although Justice Stevens concluded that the plurality held that the fifteenth amendment does not reach at-large election systems regardless of their purpose, and that the plurality's discussion of the need for discriminatory purpose was dictum, we are inclined to accept Justice White's view that the plurality's holding rested on the requirement of discriminatory purpose in fifteenth amendment claims. In any event, it is clear that a majority of the court believes that a fifteenth amendment claim can be made out against vote-diluting at-large districting if discriminatory purpose is proved. See footnote 7, supra. Although only Justice White appears to have wholly adopted this court's reasoning in *Bolden,* a majority appears to agree with the legal principles set forth in our *Bolden* opinion but not with their application to the evidence presented.

is sufficient to state a cause of action." 571 F.2d at 221. Our precedent recognizes that at-large districting may result in substantial dilution of a minority vote and therefore constitute unconstitutional infringement of the right to vote if discriminatory purpose is shown. *See Nevett v. Sides; see also United States v. East Baton Rouge Parish School Board,* 594 F.2d 56 (5th Cir. 1979).

The Court in *Bolden* discussed the text of section 2 as it stood prior to the 1975 minority language group amendment, even though *Bolden* was filed after that amendment. It is evident, however, for reasons we shall now discuss, that the amendment did not weaken the conclusion we have reached.

If the fifteenth amendment includes persons of Spanish heritage and others who are members of language minority groups within the protection accorded to those identified by race or color, an interpretation that has been advocated by the Department of Justice both in this case and in the Congress,[9] then the 1975 amendment subtracted nothing from practices reached by section 2, but merely extended its protection to specifically designated racial groups. In that event, the views expressed in *Bolden* apply directly to such groups. If, on the other hand, groups identifiable only by linguistic characteristics are

---

9. *"Section 205*
The Fourteenth Amendment is added as a constitutional basis for these voting rights amendments. The Department of Justice and the United States Commission on Civil Rights have both expressed the position that all persons defined in this title as 'language minorities' are members of a 'race or color' group protected under the Fifteenth Amendment. However, the enactment of the expansion amendments under the authority of the Fourteenth as well as the Fifteenth Amendment, would doubly insure the constitutional basis for the Act."
H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 41 (1975).

not race or color groups, however elusive the concept of race, Congress has no fifteenth amendment authority to legislate for their protection. Because Congress's fifteenth amendment enforcement authority reaches only legislation directed against racial or color discrimination, the amendment might be considered beyond the Congress's fifteenth amendment authority.

[4-6] The fourteenth amendment is broader than the fifteenth. Its protective buckler shields all citizens of the United States from abridgement of privileges and immunities of citizens, and all persons from deprivation of life, liberty and property without due process and from denial of the equal protection of the law. Congress's power under section 5 of the fourteenth amendment clearly extends to protection of any group of persons invidiously discriminated against by state law including groups identifiable by ethnic, national origin or linguistic characteristics. Purposefully discriminatory maintenance of a vote-diluting at-large districting scheme comes within the purview of that protection. *See City of Mobile v. Bolden; White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed. 2d 314 (1973).

Whether Congress had power under the fifteenth amendment to extend protection to language minority groups we need not now decide. In taking this action, Congress invoked its fourteenth amendment charter as well. *See* 42 U.S.C. § 1973b(f); *See generally* H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975); S.Rep. No. 94-295, 94th Cong. 1st Sess. (1975), U.S. Code Cong. & Admin. News 1975, p. 774. Thus, unlike the pre-1975 Act, the present statute is not limited to fifteenth amendment compass. We interpret its language within the wider fourteenth-amendment bounds and find that it reaches any

"standard, practice or procedure" instituted or maintained with the purpose of abridging the voting rights of the members of groups protected by section 2.

[7, 8] Although Congress's invocation of the fourteenth amendment alone might not support a conclusion that at-large districting is a "standard, practice or procedure" forbidden by section 2, the legislative discussion preceding the amendments indicates that this was Congress's view of the substantive scope of the section 2 prohibition when it adopted the amendments, whether or not that interpretation was previously proposed. In 1975, a central concern of the Congress was the need to protect language minority groups from practices that deprived them of equal political participation. Among the catalogued abuses, Congress noted the problem of "dilution of the vote" of language minority groups by voting structures, including "the at-large structure." "These structures effectively deny Mexican-American and black voters in Texas political access. . . ." H.R. Rep. No. 94-196, 94th Cong. 1st Sess. 19-20 (1975). The Congress specially invoked fourteenth amendment authority for the extension designed to alleviate the problems faced by Mexican-American voters in exercising their votes, and the House and Senate reports specifically discuss *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), a case in which the Supreme Court determined that a Texas at-large districting plan violated the fourteenth amendment rights of Mexican-American voters. *See* H.R. Rep No. 94-196, 94th Cong. 1st Sess. 19 (1975); S.Rep. No. 94-295, 94th Cong., 1st Sess. 25 (1975). The legislative history plainly supports the United States' position that section 2, as amended, was intended to provide the Attorney General with a means of combating the use of

at-large districting plans to dilute the Mexican-American vote.

This interpretation is also supported by the structure of the amendments. The substantive protection of language minority groups was added in a separate section, § 1973b(f). That section recites Congress's concerns about the voting rights of language minority groups, the problems they have faced, the protections and prohibitions they are to receive, and the foundation of the amendments in both the fourteenth and fifteenth amendments.[10] This suggests that Congress believed its enactment was responsive to all the concerns it expressed in the legislative history.[11]

It is evident that, whatever the scope of section 2 as a fifteenth amendment enforcement statute, its amendment in 1975 to expand its reach to fourteenth amendment

---

10. "The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic and political intimidation. The Congress delcares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices."
42 U.S.C. § 1973b(f)(1).

11. The Attorney General might have premised his suit specifically on § 1973b(f)(2). However, because § 1973 also extends protection as to the guarantees made by § 1973b(f)(2), we find no defect in the reference to that section alone.

violations was intended to bring within its scope allegations of purposeful discrimination in at-large election scheme.[12]

IV.

[9] The Act applies only to a "State or political subdivision." The school district argues that, while it might be considered an agency of the state or a political subdivision were these terms used in their usual broad significance, they are used in the act as terms of art deliberately defined in a limited way so as to exclude such units as school districts.[13]

Section 14(c)(2) of the Act, 42 U.S.C. § 1973*l*(c)(2) states:

> The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

---

12. We do not reach the question whether section 2, post-amendment, forbids mere vote dilution.

13. In *Wise v. Lipsccomb*, 437 U.S. 535, 550, 98 S.Ct. 2493, 2502, 57 L.Ed.2d 411, 423 (1978). Justice Rehnquist, joined by Chief Justice Burger and Justices Stewart and Powell stated: "we have never had occasion to consider whether an analogue of this highly amorphous theory [of vote dilution] may be applied to municipal governments . . . [T]he possibility of such distinctions has not been foreclosed. . . ." The decision in *Bolden* virtually forecloses the possibility that vote dilution is wrongful only when practiced by a governmental unit larger than a municipality. However, in enacting the Voting Rights Act, Congress may have deliberately refrained from action with regard to all political units because of its desire to preserve some state prerogatives in the federalist system. It is that possibility we now consider.

The Uvalde School District is patently not a county and it does not register voters. It is certainly not a political subdivision as defined by section 14(c)(2).

However, the Supreme Court has held that this definition limits the meaning of the phrase "State or political subdivision" only when it appears in certain parts of the Act, and that it does not confine the phrase as used elsewhere in the Act.[14] In *United States v. Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148 (1978), the court held that section 5 of the Act, 42 U.S.C. § 1973c, which requires a "State or political subdivision" to preclear voting changes, applied to Sheffield, Alabama, a municipality that had never registered voters and a governmental unit that therefore, was not a state, county or registration unit.

In *Sheffield* the Court concluded that, for section 5 purposes, when a state is designated for coverage, the simple word "state" refers to all political units within the designated state. It went on to say, in deliberate dicta, that a similar argument could be made to the term "political subdivision." A school board could not be separately designated for coverage under the Act, it said, but, "once an area of a nondesignated State had been determined to be covered" all state actors within "the designated political subdivisions" were embraced by section 5.

The definition of political subdivision in section 14(c), the Court reasoned, merely limits the political units that can be designated as subject to the Act's special remedial provisions when they are in a nondesignated State, and

---

14. See n. 4, *supra*, for a discussion of the various contexts in which the phrase appears.

thus limits only the phrase "political subdivision" as used in section 4(b), not the term as used elsewhere in the Act. In *Dougherty County Board of Education v. White,* 439 U.S. 32, 99 S.Ct. 368, 58 L.Ed.2d 269 (1978), the Court applied section 5 to a county board of education reasoning again that the board was included within the term "State."

The meaning of the term "State or political subdivision," as used in section 4(a) was considered by the Court in *City of Rome v. United States,* ____U.S.____, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980). Section 4(a) of the Act allows a covered jurisdiction to avoid its provisions by bringing a suit to establish that it has not discriminated in the past. 42 U.S.C. § 1973b. The provision is applicable with respect to a "State or political subdivision" to which the Attorney General has applied the Act's remedial provisions. In concluding that Rome, Georgia, did not come within the term "State or political subdivision" for purposes of this "bail-out" provision, the Court reasoned that the legislative history clearly allowed the bailout option only to the State as a whole or to any political subdivisions separately designated by the attorney general as coming within the Act. Rome was under the Act because it was in a designated State. Thus, it could bail out only if the State did. The Court distinguished *Sheffield,* holding that it determined only that the reach of the term "State" in section 5 was geographic, not that a city was actually a "State," and that *Sheffield* simply held that the preclearance requirement for a covered state "reached all such changes made by political units in that State." Because the legislative history clearly prohibits bailouts by individual political units in a covered state, it precluded the City of Rome from separate bailout consideration.

Here we must determine whether the term "State or political subdivision" in section 2 is to be read, as it is in section 5, to include a school board (to which *Sheffield* and *Dougherty County* would lead us) or whether it excludes such a governmental unit (to which *Rome*, interpreting section 4(a), leads).

Section 5 is a special remedial provision designed to apply only to those areas where voting discrimination has historically been present. Section 2 applies throughout the nation. The reliance placed in *Sheffield* on the geographical significance of the term "State," and the interrelationship noted between section 4 and section 5, therefore, do not apply.

However, the purpose of the definitional limitation in section 14 is not served by reading that restriction into section 2. As we have seen, the limitation was intended to limit the political units that can be designated by the Attorney General as subject to the remedial provisions of section 4 when these subdivisions are in a nondesignated state. Moreover the 1975 amendment (unlike the original Act) partially relies on the authority of the fourteenth amendment, which reaches all action under state authority. Justice Powell, dissenting in *Rome*, commented accurately that the Court has construed identical words to have varying meanings in different situations and has labeled the construction "protean," *Rome*, ____ U.S. at ____, 100 S.Ct. at 1573, 64 L.Ed.2d 119. While the characterization may be correct, it is evident that the court has interpreted these identical terms to vary in meaning depending on the purpose of the statutory section employing them. It has been guided by function, not by an effort to achieve linguistic constancy.

Given the varying interpretations of the same words reached in *Sheffield* and *Dougherty County* on the one hand and in *Rome* on the other, the section 2 interpretative problem cannot be resolved merely by processes of definition or literal exegesis. Lexicons would not eliminate the ambiguity. Absent the limiting definition in section 14, the broad sweep of section 2 would certainly embrace school boards. The narrowing of the term "political subdivision" was adopted for a particular purpose not served by incorporating the same stricture into section 2. As Mr. Justice Brennan pointed out in *Sheffield*, [discussing section 4(a)] thus to qualify section 2, would make it inapplicable to the actions of officials at polling places in hundreds of elections throughout the nation. 435 U.S. at 120-21, 98 S.Ct. at 973-74, 55 L.Ed.2d at 159.[15]

[10] In our opinion Congress intended to forbid racial, color and language minority discrimination in all of the myriad elections reached by section 2. The legislative

---

15. Mr. Justice Stevens' dissent, which was joined by Chief Justice Burger and Mr. Justice Rehnquist, in *Sheffield*, supra, suggests another meaning to the term "State," which he rejected for construction of section 5, but which does accord with the purposes of section 2. He suggested that action by the city might be considered as action of the State within the meaning of section 5. "It might be reasonable," he said "to treat the action of entities such as Sheffield, which are within the jurisdiction of a covered state, as 'state action,' just as such governmental action would be regarded as state action in a constitutional sense." 435 U.S. at 144, 98 S.Ct. at 985, 55 L.Ed.2d at 174. He rejected that reasoning, however, because he was convinced that the limited definition of political subdivision was intended to restrict the scope of federal power to require preclearance under section 5. This reading would make the words "or political subdivision" in section 2 redundant. We would be obliged to conclude either that it was included merely to emphasize the scope of the word "state" or that it was excess. This reading, however, is not implausible. *See, e. g., United States v. Saint Landry Parish School Board*, 601 F.2d 859, 866 (5th Cir. 1979).

history of the 1975 amendments to the Act not only emphasizes the discriminatory use of at-large districting to dilute the votes of Mexican-Americans, but focuses in particular on the use of such districting plans by Texas school boards.[16] When Congress has so plainly identified a problem, and amended a statute to address it, we would overstep the bounds of the judicial prerogative to interpret arguably ambiguous language in such a manner as to hold that Congress did not intend to embrace the very predicament from which it sought to extricate the victims. Therefore, we conclude that a school board is a political subdivision for section 2 purposes.

For these reasons, we REVERSE and REMAND for proceedings consistent with this opinion.

JAMES C. HILL, Circuit Judge, concurring specially:

In Part III of his opinion, my brother RUBIN has ably attempted to resolve the conceded "ambiguity" of *Bolden,* viz., whether the Fifteenth Amendment applies to voting abuses of the sort here alleged. The entire discussion is dictum, however, because the panel—properly —rests its holding on the Fourteenth Amendment. Since the Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973 (West Supp. 1980), as reenacted in 1975, derives from the Fourteenth Amendment, and since all Justices in

16. The at-large structure, with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas. *And, under state statute, the countless school districts in Texas elect at-large* with an option to adopt the majority run-off, numbered place system. These structures effectively deny Mexican-American and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation.
S.Rep. No. 94-295, 94th Cong., 1st Sess. 27-28 (1975) (emphasis supplied). U.S. Code Cong. & Admin. News 1975, p. 794.

Bolden agreed that that Amendment reaches multimember districts adopted "invidiously to minimize or cancel out the voting potential of racial or ethnic minorities," 100 S.Ct. at 1499 (plurality opinion), I concur in the result of Part III.

I join the remainder of the panel opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Fifth Circuit
October Term, 19

No. 79-1498

D.C. Docket No. DR-77-CA-20

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for Western District of Texas

Before, HILL, RUBIN and ANDERSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that defendants-appellees pay to the Plaintiff-appellant the costs on appeal, to be taxed by the Clerk of this Court.

September 2, 1980

HILL, Circuit Judge, concurring specially.

ISSUED AS MANDATE: October 17, 1980.

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

Tel. 504-589-6514
600 Camp Street
New Orleans, La. 70130

Gilbert F. Ganucheau
Clerk

October 9, 1980

TO ALL PARTIES LISTED BELOW:

No. 79-1498—USA v. UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
GILBERT F. GANUCHEAU,
Clerk

By: /s/ SALLY HAYWARD
Deputy Clerk

cc: Messrs. David Marblestone
Drew S. Days, III
Walter Barnett
Mr. Jeffrey A. Davis

APPENDIX C

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D

AMENDMENT XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on acount of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX E

Article 42 § 1973

§ 1973. DENIAL OR ABRIDGEMENT OF RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR THROUGH VOTING QUALIFICATIONS OR PREREQUISITES.

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

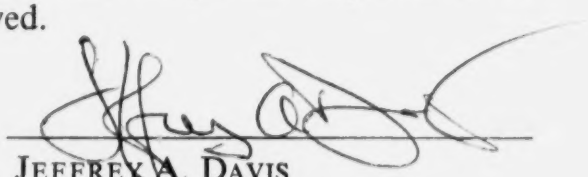
PROOF OF SERVICE

I, JEFFREY A. DAVIS, the attorney for the Uvalde Consolidated Independent School District, Cecil Arnim, Jr., Billie Bailey, Robert L. Jacobs, J. S. Lanning, Jr., Dean P. Dimmitt, Dan David and Tommy Morriss and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 7th day of January, 1981, I served copies of the foregoing Writ of Certiorari to the Supreme Court of the United States, on all the parties thereto pursuant to Rule 33(b)(3)(b), as follows:

1. The Solicitor General, Department of Justice, Washington, D.C. 20530; and

2. The Department of Justice to Drew Days, III, Walter W. Barnett, David B. Marblestone, Washington, D.C. 20530.

It is further certified that all parties required to be served have been served.



JEFFREY A. DAVIS
REYNOLDS, ALLEN, COOK,
PANNILL & HOOPER
Incorporated
16th Floor, 1100 Milam Bldg.
Houston, Texas 77002
(713) 651-1300
Attorneys for Uvalde Consolidated Independent School District, Cecil Arnim, Jr., Billie Bailey, Robert L. Jacobs, J. A. Lanning, Jr., Dean P. Dimmitt, Dan Davis and Tommy Morriss

Filed on January 7, 1981, in the Supreme Court of the United States.

No. 80-1237

In the Supreme Court of the United States

OCTOBER TERM, 1980

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Allen v. *State Board of Elections*, 393 U.S. 544 3

City of Mobile v. *Bolden*, 446 U.S. 55 ..... 2, 3, 4

City of Rome v. *United States*, 446 U.S. 156 3

Conley v. *Gibson*, 355 U.S. 41 2

United States v. *Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110 ..... 2, 10

Constitution, statutes and regulations:

United States Constitution:

Fourteenth Amendment 3, 4

Fifteenth Amendment 3, 4

Voting Rights Act of 1965, 42 U.S.C 1973 *et seq.*:

Section 2, 42 U.S.C. 1973 ..... 1, 2, 3, 4

Section 4(f)(1), 42 U.S.C. 1973b(f)(1) 4

Section 4(f)(2), 42 U.S.C. 1973b(f)(2) 1

Section 14(c)(2), 42 U.S.C. 1973*l*(c)(2) 4, 5

Page

Miscellaneous:

H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975) 3

S. Rep. No. 94-295, 94th Cong., 1st Sess. (1975) 3

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1237

UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The question is whether the court of appeals erred in holding that the complaint, which alleges purposeful abridgement of the voting rights of Mexican-Americans through the at-large election of a school board, states a claim under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, as amended.[1] Petitioners contend that (1) Section 2 does not prohibit dilution of a minority group's voting rights as a result of at-large elections and (2) the Uvalde Consolidated Independent School District is not a "State or political subdivision" within the meaning of that section.

---

[1]The text of amended Section 2 is quoted in the opinion of the court of appeals (Pet. App. A-6). The court of appeals also quotes (*ibid.*) Section 4(f)(2), 42 U.S.C. 1973b(f)(2), the provisions of which are incorporated into amended Section 2.

Contrary to petitioners' view, the ruling of the court of appeals regarding the scope of the statute is not inconsistent with the decision of this Court in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980); and the court of appeals' construction of the term "political subdivision" is supported by the reasoning of *United States* v. *Board of Commissioners of Sheffield Ala.*, 435 U.S. 110 (1978). The decision of the court of appeals in this case is not in conflict with any decision of another court of appeals. Accordingly, review by this Court is unwarranted.

1. In January 1979, the district court dismissed the amended complaint for failure to state a claim on which relief could be granted.[2] The United States appealed, and the court of appeals reversed the dismissal and remanded the case for further proceedings (Pet. App. A-1 to A-20).

The court of appeals held that Section 2 of the Act, as amended, was intended to prohibit purposeful discrimination through the use of at-large elections and that, for purposes of Section 2, a school board is a "political subdivision." Applying the principle of *Conley* v. *Gibson*, 355 U.S. 41 (1957), the court of appeals found that the allegations of the amended complaint were adequate to state a claim. Because the amended complaint alleges discriminatory purpose, the court of appeals found it unnecessary to reach the question whether Section 2 forbids "mere vote dilution" (Pet. App. A-15 n.12).

---

[2]The district court had previously dismissed the original complaint without prejudice. 461 F. Supp. 117 (W.D. Tex. 1978). The United States then amended the complaint by adding an allegation that the at-large system has been implemented with the purpose of discriminating against Mexican-Americans (Pet. App. A-4 n.3).

2. The question of the scope of Section 2 is one of congressional intent, not the power of Congress. Decisions of this Court make clear that Congress has authority, under the Fourteenth and Fifteenth Amendments, to legislate with regard to such practices as the use of at-large elections to dilute the voting rights of minority groups. See, *e.g.*, *City of Rome* v. *United States*, 446 U.S. 156, 173-178, 180-182 (1980).

The court of appeals in this case properly held that Congress intended, in Section 2, to encompass practices of the type alleged in the complaint. As the court noted (Pet. App. A-13), when Congress amended that section and other provisions in 1975, the relevant committee reports expressed a specific concern for remedying the dilution of the voting rights of minority group voters—including Mexican-Americans in Texas—resulting from use of the "at-large structure." See H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 18-20 (1975); S. Rep. No. 94-295, 94th Cong., 1st Sess. 27-28 (1975). Petitioners' quotations from the 1975 legislative history (Pet. 10-11) do not contradict these clear expressions of congressional purpose.[3]

Petitioners' interpretation of *City of Mobile* v. *Bolden*, *supra*, is also inaccurate. The principal issues in *Bolden* related to the standard for establishing unlawful dilution of voting rights and the kind of proof required to show a violation. Although two of the opinions discussed Section 2

---

[3]Petitioners also err in suggesting (Pet. 10) that Section 2, as enacted in 1965, did not encompass dilution of minority voting rights through an at-large system. As this Court stated in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), a case involving the scope of Section 5 of the Voting Rights Act, Congress' use of expansive language in Section 2 indicated "an intention to give the Act the broadest possible scope." 393 U.S. at 566-567. See also 393 U.S. at 569.

of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments, there was no holding with regard to the scope of the statute.[4]

In short, there is no merit in petitioners' view (Pet. 7-11) that the court of appeals misread *Bolden* or that it misconstrued the purpose of the 1975 amendments to the Voting Rights Act.

3. The subsidiary question raised by the petition is whether, for purposes of Section 2, the Uvalde Consolidated Independent School District is a "political subdivision." Petitioners assert that this matter is controlled by Section 14(c)(2) of the Act, 42 U.S.C. 1973*l*(c)(2), which contains a definition of "political subdivision."[5] Petitioners' argument cannot be reconciled with *United States* v. *Board of Commissioners of Sheffield, Ala., supra,* in which the Court concluded that Section 14(c)(2) had a much more limited function, *i.e.*, "that this definition was intended to operate only for purposes of determining which political units in nondesignated States may be separately designated for coverage under § 4(b)." 435 U.S. at 128-129 (footnote omitted). In the present case, the court of appeals correctly

---

[4]The plurality opinion in *Bolden,* written by Justice Stewart and joined by the Chief Justice and Justices Powell and Rehnquist, quoted the 1965 version of Section 2, referred to portions of the 1965 legislative history, and then concluded that Section 2 "adds nothing to the * * * [plaintiffs'] Fifteenth Amendment claim." 446 U.S. at 60-61. In his dissent, Justice Marshall stated (446 U.S. at 105 n.2) that he agreed with the plurality that Section 2 "contains the same standard as the Fifteenth Amendment," but that he disagreed "with the plurality's construction of that Amendment." None of the opinions in *Bolden* mentioned the 1975 amendment of Section 2 or the 1975 legislative history. As the court of appeals noted in the present case (Pet. App. A-11 to A-15), the 1975 provisions and history make clear that Section 2, as amended, rests on both the Fourteenth and Fifteenth Amendments (see Section 4(f)(1), 42 U.S.C. 1973b(f)(1)).

[5]We do not contend that the school district is a "political subdivision" within the meaning of Section 14(c)(2).

held (Pet. App. A-16 to A-20) that the Section 14(c)(2) definition of "political subdivision" does not apply to Section 2 and that the legislative history of the latter provision shows that Congress intended to reach school districts.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1981

DOJ-1981-02